THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13179 OF 2005

Dated: 27th October, 2005.

Between:

Karuturi Ravindra … Petitioner

And

1. The Deputy Transport Commissioner,
   Kakinada, E.G District.
2. The Assistant Motor Vehicles Inspector,
   Office of the Deputy Transport Commissioner,
   Kakinada, E.G. District. … Respondents

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ORDER :

The petitioner claims to be the owner of three lorries bearing Nos.AP 05–Y–9120, AP 05–Y–7922 and AP 05–Y–7933 which are registered as Goods Carrying Vehicles. The petitioner was served with a notice dated 23-4-2005 issued by the 1st respondent – Deputy Transport Commissioner, Kakinada stating that on 23-4-2005 the abovesaid three vehicles were checked by the Vigilance and Enforcement Officials along with the Assistant Motor Vehicles Inspector and the Royalty Inspector from the Office of Deputy Director of Mines & Geology as part of the Joint Vehicles Inspection at Kakinada (Atchampeta Junction) during which it was found that the said three lorries which were carrying sand from Kotipalli carried overload to the extent of 9 to 10 tons. Hence, the petitioner was directed to pay compounding fee as specified thereunder for each vehicle. However, the petitioner was informed to appear before the Secretary, Regional Transport Authority, if he has any representation to make. The petitioner states that since the vehicles in question were not transporting sand on the day of the alleged inspection, immediately he gave a reply on 3-4-2005 bringing the said fact to the notice of the Secretary, Regional Transport Authority, Kakinada. In the said letter, the petitioner has categorically denied the allegations made in the notice dated 23-4-2005 and stated that since there was no transportation of the sand on that day, the imposition of compounding fee does not arise and therefore the proposed action may be dropped. In pursuance thereof, the 1st respondent vide Memo dated 6-4-2005 reiterated the allegation that during the joint inspection at Atchampet junction of Kakinada, it was

found that the vehicles were carrying overload and that the vehicles were weighed at the weigh bridge by name Om Sri Adilakshmi Weigh Bridge, Bypass Road, Peddapuram. The xerox copies of three receipts issued by the said Om Sri Adilakshmi Public Weigh Bridge were also enclosed and the petitioner was called upon to pay the compounding fee as specified in the show-cause notice dated 23-4-2005 on or before 30-5-2005, failing which appropriate action will be taken under the provisions of the Motor Vehicles Act, 1988. Having received the same, the petitioner got issued a legal notice dated 26-5-2005 denying the allegations made in the show-cause notice as well as the memo dated 6-4-2005 and stating that the alleged weigh bridge receipts issued by Sri Adilakshmi Weigh Bridge, Bypass Road, Peddapuram are fabricated so as to implicate the petitioner in false cases. Accordingly, the 1st respondent was called upon to drop the proceedings, failing which the necessary legal action will be initiated. In response to the legal notice, the 1st respondent by letter dated 8-6-2005 informed the Counsel for the petitioner that the vehicle check was conducted at Atchampet junction, but since the vehicles were on move they were caught at the junction point of ADB Road and Kakinada - Samalkot Old Road. Hence, the vehicles were taken to weigh bridge 'Om Sri Adilakshmi Public Weigh Bridge' which is on the ADB Road nearer to the checking point. Therefore, the proceedings initiated against the petitioner vide show-cause notice dated 23-4-2005 are in accordance with law and therefore the petitioner is liable to pay the compounding fee as specified thereunder on or before 8-6-2005. Aggrieved by the said action of the 1st respondent, this writ petition is filed.

The petitioner contends that since the alleged inspection took place at ADB road which is nearer to Kakinada port where there are three to four weigh bridges, the alleged weighment at Om Sri Adilakshmi Public Weigh Bridge at a distance of 25 to 30 Kms was contrary to Rule 399 of the A.P. Motor Vehicles Rules, 1989 (for short, 'the Rules'). That apart, since no check report was prepared on the spot and there were no remarks with regard to the off-load of excess weight, the action of the 1st respondent in issuing the impugned notices ignoring the objections raised by the petitioner is arbitrary and illegal.

The 1st respondent filed a counter-affidavit stating that since the vehicles of the

petitioner were found carrying overload of sand, the show-cause notice dated 23-4-2005 was rightly issued in accordance with the provisions of Sections 113 and 114 of the Motor Vehicles Act, 1988. It is also stated that the check was conducted on 23-4-2005, during which the vehicles were stopped at the junction point of ADB Road at Kakinada – Samalkot Road and they were taken to Om Sri Adi Lakshmki Public Weigh Bridge, Bypass Road, Peddapuram for weighment by the Checking Officers. The vehicles were weighed and found that the same were carrying overload from 9 to 10 tons. When the Assistant Motor Vehicles Inspector was about to make out Vehicle Check Reports, the petitioner came there in a car bearing No.AP 05 AB 5769 and high-handedly got the vehicles removed from the weigh bridge, obstructing the Government Officials from discharging their official duties. A criminal case was launched against the petitioner for his misbehaviour with the Government Officials. All the allegations made in the Reply of the petitioner as well as the legal notice were nothing but misrepresentation of facts. The action initiated under the impugned notices being in accordance with law, the writ petition is misconceived and liable to be dismissed.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

Section 113 of the Motor Vehicles Act, 1988 provides for the limits of weight and limitations on use of the vehicles. As per Sub-section (3) of Section 113, no person shall drive or cause or allow to be driven in any public place any motor vehicle the unladen weight of which exceeds the unladen weight specified in the Certificate of Registration of the Vehicles or the laden weight of which exceeds the gross vehicle weight specified in the Certificate of Registration. Under Section 114 of the Act, any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of Section 113 require the driver to convey the vehicle to a weighing device, if any, within a distance of 10 Kms from any point on the forward route or within a distance of 20 Kms from the destination of the vehicle for weighment and if on such weighment the vehicle is found to contravene in any respect the provisions of Section 113 regarding weight, he may by order in writing direct the driver to off load the excess weight and not to remove the vehicle from that

place until the laden weight has been reduced so that it complies with Section 113 of the Act.

In the case on hand, the specific case of the respondents is that the vehicles belonging to the petitioner were stopped by the officers who conducted joint vehicular check at the junction point of ADB Road and Kakinada – Samalkot road suspecting overloading vehicles. On weighment of the vehicles, at Om Sri Adilakshmi Public Weigh Bridge, Bypass Road, Peddapuram, it was found that all the three vehicles were carrying overload from 9 to 10 tons which is in contravention of the provisions of Section 113 of the Act. However, even before the check reports were prepared and the necessary endorsements were made on the goods carriage permits, the petitioner got the vehicles removed from the weighbridge, obstructing the officials from discharging their official duties. The petitioner attempts to contradict the version of the respondents claiming that on the day on which the check was conducted, the vehicles of the petitioner were not carrying sand at all and the entire case was foisted against the petitioner on the basis of the fabricated documents in the name of Om Sri Adilakshmi Public Weigh Bridge, Bypass Road, Peddapuram. However, except the Reply dated 3-5-2005 issued by the petitioner and the legal notice dated 26-5-2005 got issued by the petitioner, no other material has been placed before this Court to substantiate his plea that the vehicles in question were not carrying the sand loads at the relevant point of time. At any rate, it is a pure question of fact, which cannot be enquired into and adjudicated by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

The other contention raised by the petitioner is that Om Sri Adilakshmi Public Weigh Bridge, Bypass Road, Peddapuram is at a distance of 25 - 30 kms from the place of check which is in contravention of Section 113 read with Rule 399 of the Rules. The said allegation has been explained by the 1st respondent in his counter-affidavit stating that Om Sri Adi Lakshmi Public Weigh Bridge is the nearest weigh bridge to the check point and that the distance between the check point and the weigh bridge is less than 10 Kms.

In the light of the rival claims made by the parties with regard to the distance which is

again a disputed question of fact, this Court cannot enter into the controversy and record any finding thereon. At any rate, driving the vehicle exceeding permissible weight in contravention of the provisions of Sections 113 and 114 is punishable under Section 194 of the Act with a minimum fine of Rs.2,000/- and an additional amount of Rs.1,000/- per ton of the excess load together with the liability to pay charges for off-loading of the excess load. Sub-section (2) of Section 194 of the Act provides that any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an authorised officer shall be punishable with fine which may extend to Rs.3,000/-. However, under Section 200 of the Act, such offence under Section 194 may either before or after the institution of the prosecution is compoundable. Sub-section (2) of Section 200 states that where an offence has been compounded, no further proceedings shall be taken against the offender in respect of such offence. Therefore, in case the petitioner is not willing for compounding the alleged offences, it is always open to him to contest the proceedings that may be instituted by the respondents, in which event the allegations will be enquired into and adjudicated by the competent authority following due process of law. Hence, it is not open to the petitioner to challenge the proceedings initiated under Section 200 of the Act for compounding the alleged offence. Thus, the writ petition itself is premature and absolutely there is no cause of action to challenge the impugned proceedings at this stage.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

27th October, 2005.

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